STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF IOWA, Public Employer/Petitioner, and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, IOWA COUNCIL 61, Certified Employee Organization.	)	CASE NO. 4393
STATE OF IOWA, Public Employer, and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, IOWA COUNCIL 61, Certified Employee Organization/Petitioner.	)	CASE NO. 4394

REISSUED[1] RULING ON NEGOTIABILITY DISPUTE

The State of Iowa (State) and the American Federation of State, County and Municipal Employees, Iowa Council 61 (AFSCME) filed petitions for expedited resolution of negotiability disputes with the Public Employment Relations Board (PERB or Board) pursuant to PERB Rule 6.3 (Ch. 621, Ia. Admin. Code §6.3). The petitions were consolidated for oral arguments pursuant to PERB Rule 2.16. The State and AFSCME seek rulings as to whether certain contract

[1]We issued an original Ruling on Negotiability Dispute in this case on June 12, 1991. Subsequently, both parties requested clarification of our ruling regarding certain proposals at issue. In light of the filing of uncontested requests for clarification filed by each of the parties, we have reviewed our previous ruling and believe that clarification is warranted with regard to Proposal 7. Accordingly, we are reissuing this ruling with clarifying language. This ruling supercedes and replaces our prior ruling.

proposals constitute mandatory, permissive or illegal subjects of bargaining under Section 9 of the Public Employment Relations Act (Act), §20.9, Code of Iowa (1991).

The State and AFSCME filed briefs with the Board on March 25, 1991, and on March 27, 1991, the parties presented oral arguments. Based upon the entire record in this matter, and the briefs and oral arguments of the parties, we make the following:

FINDINGS OF FACT

The State and AFSCME are parties to a two-year collective bargaining agreement covering the fiscal years July 1, 1989 to June 30, 1991. During negotiations for a successor two-year labor agreement, negotiability disputes arose regarding a number of contract proposals submitted by AFSCME, which we have numbered below in our conclusions of law as Proposals 1-17.[2] An interest arbitration hearing was held on February 16 and 17, 1991, and the arbitration award was issued on February 27, 1991, favoring AFSCME's position on the proposals at issue in this negotiability dispute. Pursuant to PERB Rule 7.7(5)[621-I.A.C. §7.7(5)], the arbitrator's award regarding the proposals is conditional upon our negotiability determinations.

CONCLUSIONS OF LAW

The issue presented in these cases is whether the contract proposals set forth below are mandatory, permissive or illegal subjects of bargaining within the meaning of Section 9 of the

[2]Proposals 1-17, set out in full in our "Conclusions of Law", below, are incorporated herein by reference.

Public Employment Relations Act. Section 9 of the Act states, in relevant part:

> The public employer and the employee organization shall meet at reasonable times, . . . to negotiate in good faith with respect to wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training and other matters mutually agreed upon . . . and grievance procedures.

It is well established that in determining whether a contract proposal is a mandatory subject of bargaining under Section 9 of the Act, the Board must utilize a two-step analysis: First, the proposal must fall within the meaning of one of the Section 9 subjects of bargaining. Second, there must be no legal prohibition against bargaining the proposal. Charles City Education Association v. PERB, 291 N.W.2d 663, 666 (Iowa 1980). In determining whether a contract proposal is a mandatory subject of bargaining, the Board does not decide whether a particular proposal is fair or financially reasonable. A negotiability determination is made by looking only at the subject matter and not the relative merits of the proposal at issue. Charles City Community School District v. PERB, 275 N.W.2d 766, 769 (Iowa 1979).

The Iowa Supreme Court has concluded that the Section 9 "laundry list" of mandatory subjects of bargaining must be interpreted restrictively, Charles City Community School District, supra, 275 N.W.2d at 773, since the legislature intended each Section 9 topic of bargaining to have a restrictive and narrow application. City of Fort Dodge v. PERB, 275 N.W.2d 393, 398 (Iowa

1979). The Court has also concluded that a Section 9 bargaining right must be balanced against the broad management rights reserved to a public employer under Section 7 of the Act. Charles City Education Association v. PERB, supra, 291 N.W.2d at 666. However, Section 9 mandatory subjects of bargaining generally constitute exceptions to a public employer's exclusive Section 7 management rights. City of Fort Dodge v. PERB, supra, 275 N.W.2d 397.

With the above general legal principles in mind, we turn to an analysis of the proposals at issue in this case.

Proposal 1

Article II, Section 7 Discrimination

> The parties agree that their respective policies regarding mandatory subjects of bargaining consistent with the Code of Iowa will not violate the rights of any employees covered by this Agreement because of age, race, sex, creed, color, national origin, ancestry, disability, partisan political affiliation, union or non-union affiliation.

AFSCME contends that its non-discrimination proposal, as drafted, is a mandatory subject of bargaining because its application is limited to mandatory subjects of bargaining contained in the labor agreement.

We first note that the proposal, as drafted, is not, as AFSCME contends, limited to mandatory subjects of bargaining "contained in the labor agreement", but rather, on its face, refers generally to the respective policies of both the State and AFSCME, whether specifically addressed in the contract or not. While specific employer policies may constitute mandatory subjects which must, upon request, be bargained, the policies of a certified employee

organization clearly do not, since they have no bearing on the employer-employee relationship. For this reason alone, we would find the proposal at issue non-mandatory.

In addition, we have consistently held that, although "non-discrimination" clauses similar to this proposal may constitute accurate statements of existing law, such provisions do not fall within the scope of Section 9 of the Act. Western Hills AEA 12, 81 PERB 1848; Andrew Community School District, 84 PERB 2629; Iowa City Community School District, 85 PERB 2909. We reached this conclusion in Western Hills AEA 12 and Andrew Community School District even though the non-discrimination proposals at issue in those cases referred specifically to the mandatory topic "grievance procedures", and, in Iowa City Community School District, the proposals related to the mandatory topic of "wages". Similarly, the purpose of the non-discrimination proposal here is not altered, or rendered mandatory, merely by referencing its application to "mandatory subjects of bargaining". The proposal is a permissive subject of bargaining.

PROPOSAL 2

Appendix H Department of Corrections

> 4. Article XII, Training Committee. The Union and the Employer agree to establish committees at adult corrections institutions in the Department of Corrections for the purpose of discussing and formulating recommendations relating to training as it regards health and safety. Such committees shall be comprised of three (3) members to be designated by the Employer and three (3) employees to be designated by the Union.
>
> Such committees shall meet on a quarterly basis following labor-management meetings, when possible, and written recommendations shall be submitted to the warden or

superintendent of the institution on a quarterly basis. Copies of the recommendations shall be forwarded to the Director of the Department of Corrections.

Employees shall be in pay status when the above referenced meetings are held during the employee's regularly scheduled hours of employment. The Employer is not responsible for any travel expense or other expenses incurred by employees for the purpose of complying with the provision of this Section.

This proposal, like most of the remaining proposals at issue in this case, deals with the operation of a joint labor-management committee.

The Board has determined that a joint labor-management committee is a mandatory subject of bargaining if the substantive purpose of the committee is restricted to the study or investigation of a Section 9 mandatory topic of bargaining. Andrew Community School District, 84 PERB 2629. In State of Iowa, 81 PERB 1846 & 1855, the Board ruled permissive a proposal which established periodic labor-management meetings and stated that "the purpose of the committee shall be to afford both labor and management a forum in which to communicate on any items that may be of interest to both parties". The Board found that the proposal was not limited to meetings concerning mandatory subjects of bargaining. The Board has consistently ruled as permissive the designation of who will represent labor and management on the committee. See, e.g., Andrew Community School District, supra; Boyden-Hull Community School District, 85 PERB 2903. The Board has also concluded that economic fringe benefits which accompany professional training, e.g., proposals for reimbursement of

employee expenses such as travel, lodging and meals, are permissive. Andrew Community School District, supra.

In the present case, AFSCME argues that Proposal 2 is mandatory under the Section 9 categories "health and safety" and "hours".

The first two paragraphs of Proposal 2 establish a joint committee for the stated purpose of discussing and formulating recommendations "relating to training as it regards health and safety". We believe this language is too broad to clearly fall within the Section 9 category "health and safety" as that term has been narrowly defined by PERB and the courts.

In order to be considered mandatory under the Section 9 category "health and safety", established caselaw requires that a contract proposal must bear a direct relationship to the health and safety of employees "as a means of protecting employees beyond the normal hazards inherent in their work, so long as there is not a substantial interference with the duties and obligations of public officials to set the basic policies by which government accomplishes its mission and the methods by which those policies are implemented". City of Iowa City, 82 PERB 1892 (Decision on Remand). Pursuant to this restrictive test, many proposals relating to health and safety matters have been found non-mandatory if the relationship to employee health and safety is indirect in nature or if they may interfere too substantially with the employer's policy-making responsibilities. City of Burlington, 91

PERB 3876. See also Clinton Police Department Bargaining Unit v. PERB, 397 N.W.2d 764 (Iowa 1986).

Proposal 2, as drafted, could be read to encompass training related to all health and safety issues, and not just those which fall within the narrow statutory definition.

In addition, such matters such as levels of training and education required of employees, generally, fall within management's exclusive Section 7 right to determine employee qualifications. Although training bearing a direct relationship to health and safety may, in some instances, constitute an exception to that employer right, (See City of Iowa City, 82 PERB 1892) we cannot justify such an exception here, where the proposal is not clearly limited to the Section 9 topic as it has been narrowly defined by established caselaw.

The third paragraph of Proposal 2 provides that employees who serve on the committee will be in "pay status" when committee meetings are held during the employee's scheduled work hours. In dealing with a similar issue, the Iowa Supreme Court has ruled as permissive a contract proposal which allowed grievance committee members to investigate and process grievances during work hours and without loss of pay. Charles City Community School District v. PERB, 275 N.W.2d 766 (Iowa 1979). The Court concluded that processing grievances during work hours without loss of pay limits an employer's statutory right to allocate and distribute work to employees. In this case AFSCME's contract proposal likewise requires the State to pay employees, during work hours, to attend

committee meetings. Subsequent to Charles City Community School District, supra, the Board has held mandatory contract proposals which propose a "leave of absence" for the purpose of processing grievances or conducting other union business during work hours. In West Des Moines Community School District, 82 PERB 2156, the Board concluded:

> In all these cases the issue has been whether the proposals are non-mandatory under the Supreme Court's Charles City holding that an employer cannot be required to bargain on a proposal to permit employees "to utilize work time to investigate and handle grievances rather than produce work for the employer," or whether they are distinguishable from Charles City as a leave of absence from work, thus mandatory under that section 9 category, which was not at issue and which the Supreme Court did not consider in the Charles City case. The line to be drawn can be, concededly, a narrow one, but we believe the distinction a real one which must nonetheless be addressed. Leaves of absence are, after all, a separate mandatory subject in section 9, and even the narrowest interpretation of that term would seemingly include such traditional matters as paid or unpaid leaves to conduct union business.

Accordingly, in West Des Moines Community School District, supra, the Board held mandatory a contract proposal which required the employer to grant a leave of absence for employees to attend an arbitration hearing or to "appear in an administrative proceeding." In contrast, AFSCME's proposal in this case, requiring the State to pay employees to attend committee meetings during worktime, is a permissive subject of bargaining because the proposals do not provide for a paid leave from work.

The last sentence of Proposal 2 refers to responsibility for travel and other expenses incurred by employees in connection with the joint committee meetings. As noted previously, proposals

dealing with such fringe benefits have been ruled permissive. Andrew Community School District, 84 PERB 2629.

For the above reasons, we conclude that Proposal 2 is permissive in its entirety.

The State argued that Proposal 2 and the other joint labor-management committee proposals at issue in this case are permissive, but argued, alternatively, that the proposals are illegal subjects of bargaining.

It is the State's position that AFSCME's joint labor-management committee proposals are illegal even if limited in scope to discussions and recommendations on mandatory subjects of bargaining, because they require the State, through representatives of its local departments and institutions, to engage in year-round bargaining with AFSCME representatives. The State notes that Sections 20.17(8) and 19A.1(2)(g), Code of Iowa, grant the Governor or the Governor's designee (IDOP Director) the authority to negotiate collective bargaining agreements, and views the proposed committees as an improper delegation of such authority to local managers.

The Board has not found a legal prohibition against bargaining over joint labor-management committee proposals, but has consistently reviewed on a case-by-case basis the substantive purpose and extent of authority of a proposed joint labor-management committee in determining its negotiability status.

In Estherville Community School District, 84 PERB 2658, the Board reviewed a contract proposal which established a joint labor-

management committee to develop an employee evaluation instrument which, when ratified by the parties, would be included in their collective bargaining agreement. The Board concluded that the proposal was permissive because it required bargaining and ratification of an evaluation instrument during the life of the labor agreement. The Board viewed the proposal as an independent impasse procedure because it required labor and management to bargain beyond the statutory impasse time limits within which the parties are obligated to bargain. The Board stated:

> . . . while it may be beneficial to the parties in special circumstances to continue bargaining throughout the duration of an agreement such bargaining must be mutually agreed upon, and cannot be imposed as a mandatory topic under Section 20.9 (Estherville Community School District, p.3)

In Boyden-Hull Community School District, 85 PERB 2903, the Board reviewed a proposed joint labor-management insurance study committee established for the purpose of investigating alternatives to the parties' insurance plan. The proposal was ruled permissive because the proposal designated who would represent the employer on the committee. In so ruling the Board concluded that, unlike Estherville Community School District, the Boyden-Hull proposal did not require continued bargaining and ratification of the insurance alternatives developed by the joint study committee. Likewise, in Carroll Community School District, 85 PERB 2919, the Board ruled permissive a proposed joint labor-management committee to construct a teacher evaluation instrument because the proposal designated who was to serve on the committee; but the Board concluded that the

committee concept did not constitute continued bargaining over evaluation criteria.

In Iowa City Community School District, 85 PERB 2909, the Board addressed the legality of a proposed comparable worth and job evaluation labor-management study committee. The Board's decision in that case was primarily based on the portion of the proposed committee which established wage parity between certain bargaining units. The proposed Iowa City committee established the process, procedures, implementation, and resolution of any unresolved issues regarding the committee's assignment of job positions to specific pay ranges. The Board concluded that a joint labor-management committee to study the comparable worth of individual job classifications is mandatory under the Section 9 topic "job classifications". The Board ruled however, as illegal, the portion of the proposal regarding the implementation of the committee's recommendations and the proposed use of an arbitrator to rule on the unresolved issues resulting from the committee's work. The implementation provision was ruled illegal because, as a wage parity proposal, it would contractually link, during the life of the labor agreement, one bargaining unit's wages to other District bargaining unit wage rates.

In accord with the reasoning of this line of cases, we believe that joint committees limited to discussion and non-binding recommendations regarding mandatory subjects of bargaining do not require the type of bargaining obligation contemplated by statutory collective bargaining requirements. Such committees have no

authority to effectuate or implement modifications to mandatory subjects either contained-in or not contained in a collective bargaining agreement and, thus, do not improperly delegate the Governor's bargaining authority. We find no legal prohibition against bargaining such proposals.

PROPOSAL 3

Appendix H Department of Corrections

5. Article XII Health and Safety, Communicable/Contagious Diseases.

* * * *

Local training committees will coordinate the development of training opportunities and information programs for employees, their families and other concerned individuals.

We find Proposal 3 non-mandatory because it is not clearly limited to "health and safety" as that Section 9 term has been defined and interpreted, and because it applies to persons other than employees, who do not fall within the bargaining unit covered by the contract or even within the coverage of the Act.

PROPOSAL 4

Appendix J Department of Human Services

3. Pursuant to Article XII, Section 8, Training Committee for employees in Department of Human Services institutions:

a. A joint committee shall be formed for the purpose of making recommendations concerning employee training relating to health and safety and other mandatory subjects of bargaining. The committee shall be comprised of an equal representation of the AFSCME Institutional Care Committee and DHS Management representatives. Insofar as possible, meetings will be held in conjunction with other scheduled state-wide labor/management meetings or may be held on teleconference as mutually agreed upon.

b. Recommendations of this committee shall be made to the Director of the Department of Human Services or the Director's designee.

c. A sum of $50,000 for each fiscal year of the contract shall be set aside within the Department of Human Services to fund these programs. These funds may be expended for training programs, participation in employee tuition reimbursement costs, or other education or career enrichment activities. The expenditure of funds under this agreement is contingent upon the continued availability of this funding.

It is the intention of both Parties to improve the quality of training and education of the employees engaged in the care and treatment and related services to Department of Human Services residents and patients.

We find Proposal 4 non-mandatory for a number of reasons. As in the case of previous proposals, the stated purpose of the committee is overly broad and is not clearly limited to the narrow scope of "health and safety". Section 3(a) of the proposal also attempts to designate particular representatives of labor and management on the committee.

Section 3(c) of the proposal is clearly permissive, if not illegal, in that it purports to require the expenditure of a specific sum to fund certain programs, thus encroaching on the State's statutory budget-making responsibilities. It also seeks to fund programs, such as employee tuition reimbursement costs, which are, themselves, permissive subjects of bargaining. See e.g. Great River AEA 16, 83 PERB 2372 & 2384.

PROPOSAL 5

Appendix S Community Corrections

Article XII, Section 8, Training Committee.

The Union and the Employer agree to establish a committee for the purpose of discussing and formulating recommendations relating to training as it regards health and safety. The committee shall be comprised of nine (9) members to be designated by the Employer and nine (9) employees to be designated by the Union.

The committee shall meet on a quarterly basis following labor management meetings, when possible, and written recommendations shall be submitted on a quarterly basis. Copies of the recommendations shall be forwarded to the appropriate District Director.

Employees shall be in pay status when the above referenced meetings are held during the employee's regularly scheduled hours of employment. The Employer is not responsible for any travel expense or other expenses incurred by employees for the purpose of complying with the provisions of this Section.

This proposal is virtually identical to Proposal 2, above, and, for all of the reasons stated in our discussion of Proposal 2, also constitutes a permissive subject of bargaining.

PROPOSAL 6

Appendix S Community Corrections

Article XII, Communicable/Contagious Diseases.

* * * *

The Training Committee will coordinate the development of Training opportunities and information dissemination programs for employees, their families or other concerned individuals.

This proposal is virtually identical to Proposal 3, discussed above, and for the reasons stated in our discussion of Proposal 3, is also a permissive subject of bargaining.

PROPOSAL 7

Article X Leaves of Absences, Section 4

F. The Employer shall allow a paid leave of absence for a reasonable number, as set forth below, of Union representatives to attend labor/management meetings to discuss issues dealing with mandatory subjects of bargaining.

The employer agrees to establish quarterly and monthly labor/management meetings in accordance with Appendix E when requested by the appropriate local. The Employer and Union will attempt to have joint labor/management meetings whenever possible.

When there is a joint meeting, there will be a minimum of one Union representative from each bargaining unit,and one representative from each local. When there are not joint meetings, a reasonable number of people (6) from the bargaining unit of the Union will attend the meeting. The parties shall exchange agendas seven calendar days in advance of the meeting. If the Union fails to provide an agenda as set forth above, the meeting will not be held. The purpose of the committee shall be to afford both labor and management a forum, in which to communicate on items regarding mandatory subjects of bargaining that may be of interest to both parties specifically including but not limited to health and safety practices and layoffs because of deinstitutionalization if anticipated by the Employer. Recommendations of the committee or recommendations made by the Union representative involving mandatory subjects of bargaining which are not acted upon and which are non-economic in character (no cost to the state) may be submitted to binding arbitration pursuant to Article 4 of this agreement commencing at Step 3. Recommendations on mandatory subjects of bargaining which have not been acted upon and are economic in nature shall be submitted to the Executive Council or the Board of Regents or taken up at the Departmental Statewide Labor/Management meeting, whichever is applicable and their decision shall be final and binding. Union representatives will be in pay status for all time spent in labor/management meetings which are held during their regularly scheduled hours of employment. The Employer is not responsible for any travel expense or other expenses incurred by employees for the purpose of complying with the provisions of this Article.

We find the first paragraph of Proposal 7 to be mandatory under the Section 9 topic "leaves of absence". We have previously determined that "leaves of absence", both paid and unpaid, are clearly mandatory under that separate Section 9 category. West Des Moines Community School District, 82 PERB 2156. Although the leave sought here is for the purpose of attending the labor-management meetings outlined in the proposal's second paragraph, the establishment of which we find to be permissive, as discussed below, this fact does not alter the nature of the first paragraph as a leave of absence proposal. Leaves of absence for a variety of purposes, including purposes which are themselves not mandatory

subjects of bargaining, such as personal leave, adoption leave, etc., are very common and are mandatory under Section 9. Although this provision may be deprived of any practical effect due to the permissive nature of the remainder of Proposal 7, it is, nonetheless, mandatory leave of absence language.

We find the second paragraph of Proposal 7 to be a permissive subject of bargaining for a number of reasons.

We believe the purpose of the proposed committee, which may be discerned in part by language in paragraph one, (the leave of absence provision) "to discuss issues dealing with mandatory subjects of bargaining", and in part from language in paragraph two, "to communicate on items regarding mandatory subjects of bargaining that may be of interest to both parties", to be overly broad and too general to determine with any certainty that the committee's purpose is clearly limited to mandatory subjects. This language could easily be interpreted as encompassing matters which are not themselves mandatory, but are merely tangential or related to mandatory subjects.

In addition, the authority of the committee is not limited to discussion and recommendations, but would require mid-contract term implementation of recommendations either through mutual agreement or binding arbitration mechanisms. This proposal is similar to the "independent impasse procedure" found permissive by the Board in Estherville Community School District, 84 PERB 2658 (discussed above) because the proposal required continuing bargaining

throughout the duration of the agreement. We, likewise, find paragraph 2 of this proposal to be permissive.

The final two sentences of Proposal 7 are virtually identical to the language in Proposal 2 regarding pay status and expenses, and are likewise permissive.

PROPOSAL 8

Appendix E Monthly Labor/Management Meetings

1. Board of Regents:
   Institutions

2. Department of Human Services:
   Institutions
   Districts
   Central Office

3. Department of Transportation:
   Districts
   Ames/Des Moines Complex

4. Alcoholic Beverage Division:
   Counties

5. Department of Revenue and Finance:
   Area
   Central Office

6. Department of Employment Services:
   Districts
   Administrative Office

7. Department of Corrections:
   Institution
   Central Office

8. Community-based Corrections
   Districts

9. Department of Public Defense
   Division of Disaster Services

10. Department of Agriculture

11. Labor-management meetings in agencies not listed above will be arranged through the mutual agreement of the Union and the Department of Personnel.

Proposal 8 is incorporated by reference in Proposal 7. It consists of the "Appendix E" referred to in the second paragraph of Proposal 7, and establishes the departmental committee structure for implementing Proposal 7.

Viewed either standing alone or in conjunction with Proposal 7, Proposal 8 is permissive. On its face it is not limited to any Section 9 topic. Since it is intended to implement the language in Proposal 7 establishing labor-management committees which we have determined to be permissive, Proposal 8 is also permissive.

PROPOSAL 9

Article IX Wages and Fringe Benefits, Section 9

D. In scheduling vacation (annual leave), choice of time and amounts shall be governed by seniority as defined in Article V, provided employees submit their vacation requests at least sixty (60) calendar days prior to the requested time off. When vacation requests are not submitted sixty (60) days in advance, vacations will be granted on a first come, first served, basis. Vacation requests will be answered within five (5) working days from the date of receipt unless such requests are submitted more than sixty (60) days in advance. The Employer and the Union shall discuss at labor/management meetings disputes over the number of employees within each classification and work unit that may be on vacation at any given time. Once vacation periods have been scheduled, the Employer shall make no changes in employee vacation schedules except to meet emergencies. In the event the Employer finds it necessary to cancel a scheduled vacation, the affected employee may reschedule his/her vacation during the remainder of the calendar year or extend the scheduling of his/her vacation into the ensuing calendar year as he/she desires, providing it does not affect other employees' vacation periods. Every attempt will be made to grant employees vacation at the requested time. Any disputes resulting from scheduled vacation priorities will be resolved by the local union.

Proposal 9 deals with the scheduling of vacations. We have previously determined that both the amount of vacation time earned and the scheduling of vacations fall squarely within the mandatory

Section 9 topic "vacations". City of Dubuque, 77 PERB 964; State of Iowa, 81 PERB 1846 & 1855.

Although it could be argued that the sentence in Proposal 9 requiring the parties to discuss disputes over the number of employees that may be on vacation at any given time could potentially have some impact on management's rights to assign and to determine staffing levels, this possible impact is not fatal to AFSCME's proposal.

As the Board noted in finding mandatory an "hours" proposal setting employee starting and quitting times,

> We concede that the above proposal, if adopted, might infringe upon the employer's right to assign employees outside the scheduled working hours. But, as we have previously said, such an infringement must be unavailing where the topic constitutes a proper subject for mandatory bargaining under Section 9. Negotiations of nearly every subject listed in Section 9 does in some manner restrict management's discretion, indeed, a proposal setting the total number of working hours in a week might be no less restrictive than the proposal above. But it is those kinds of limitations upon the employer's authority which are intended by the Act and which the legislature yielded to employees for the purpose of granting them bargaining rights concerning those conditions of their employment set forth in Section 9. Sergeant Bluff-Luton Community School District, 76 PERB 715.

In State of Iowa, 81 PERB 1846 & 1855, PERB rejected the employer's argument that vacation scheduling should be held non-mandatory due to its impact on employer rights. PERB stated:

> We believe. . .that the State's objection to the proposals related more to their merits than their negotiability and should thus be directed to the fact-finder. But we do not believe that bargaining is any less required when an otherwise valid vacation proposal would, at least in the judgment of management, reduce its operating efficiency. As we said in Des Moines

Association of Professional Firefighters, PERB Case No. 1166 (1978):

> In City of Dubuque and Dubuque Policemen's Protective Association, PERB Case No. 964 (1977) . . . the Union's vacation proposal permitted policemen to take their vacation at any time during the year. The City alleged that, although "vacation" is a mandatory subject of bargaining, permitting free selection of vacation periods interfered with management's control over assignments and the level of service to be maintained. Notwithstanding that argument, we found the proposal mandatory, noting that the City's objections went more to the merits and the propriety of the contract provisions than to its negotiability. This case presents similar issues and requires a similar answer. Although personnel assignments are most certainly within the bailiwick of management, the proposal does nonetheless constitute a mandatory subject. Consequently, any concerns about its impact on assignments must be raised in the bargaining context and cannot in this instance constitute a valid attack on its negotiability.

We find that AFSCME's proposal constitutes a mandatory subject of bargaining under the Section 9 topic "vacations", with the exception of the last sentence, which we find non-mandatory.

The last sentence of Proposal 9 states, "Any disputes resulting from scheduled vacation priorities will be resolved by the local union." We are not certain what kinds of disputes this sentence is intended to address, and find the language of the sentence too imprecise and broad to allow us to determine whether it is limited to the Section 9 topic "vacations".

PROPOSAL 10

Article X Leaves of Absence, Section 4

E. Delegates to Joint Labor/Management Committees

The Local Union President/Chapter Chair or his/her designee shall be granted time off, with pay, to attend regular meetings or conferences of joint Labor/Management committees such as LEECALM and QCALM. Such leaves shall not exceed eight (8) hours per month.

Proposal 10, which identifies who will represent AFSCME in labor management meetings, is permissive. (See discussion under Proposal 2.

PROPOSAL 11

Appendix B Organizational and Employing Units

Organization units for purposes of layoff pursuant to Article VI and employing units for purposes of transfers pursuant to Article VII, are defined as:

* * * *

The employee laid off shall be considered an employee of the Department whose budget supports the majority of his/her salary and shall have bumping rights within that Department only. For employees whose salaries are 50% supported by two Departments, the affected local Unions and local management shall agree upon which Department is the employee's organizational unit.

Proposal 11 establishes a method for determining in which group to place an employee for purposes of implementing lay-off or transfer decisions when dealing with an interdepartmental employee.

We do not view this proposal as infringing on the State's right to determine when a lay-off or transfer is necessary, but merely a method of determining how such decisions, once made, are to be implemented. Such procedural matters have consistently been held mandatory under the Section 9 topics "transfer procedures" and "procedures for staff reduction". Bettendorf-Dubuque Community School District, 76 PERB 598 & 602; Saydel Education Association v.

PERB, 333 N.W.2d 486 (Iowa 1983); State of Iowa, 84 PERB 2632. We find Proposal 11 to be a mandatory subject of bargaining.

PROPOSAL 12

Appendix I Department of Transportation

~~3.~~2. The Department of Transportation and the Union shall discuss at labor/management meetings the scheduling of motor vehicle officers to work the midnight shift of the rotation system.

PROPOSAL 13

Appendix Q Professional Fiscal and Staff Unit

2. Problems in work schedules for Field Staff employees in the Department of Inspections and Appeals shall be a topic of discussion pursuant to the labor/management committee process.

The Board has consistently held that the Section 9 topic "hours", includes mandatory bargaining over the total hours of work, starting and quitting times, and lunch and break periods; but that Section 9 does not require bargaining over the allocation of duties and assignments during work hours. Bettendorf-Dubuque Community School Districts, 76 PERB 598 & 602. Proposals 12 and 13, as drafted, do not deal with the State's allocation or distribution of work; rather the proposals deal with the mandatory topic of employee work schedules. Accordingly, pursuant to our previous discussion, a proposal for a joint labor-management committee limited to the purpose of discussing work schedules, a mandatory topic of bargaining, would ordinarily also be considered mandatory.

The difficulty with the proposals here, however, is that they are proposed Appendices to the contract, and do not themselves establish a joint labor-management committee, but rather,

apparently are intended to establish work schedules as one topic to be discussed at labor-management committees established by other proposals or contract provisions. These Appendices do not specifically relate to any of the other proposals before us. In viewing these proposals on their face, as we must, we cannot determine whether the labor-management committees referenced therein are limited in scope and purpose in compliance with our previously-discussed legal principles regarding the negotiability of labor-management committees. Accordingly, we conclude the proposals are permissive.

PROPOSAL 14

Appendix I Department of Transportation

~~5.~~4. The State of Iowa and AFSCME/Council 61 agree to address the following issues in the statewide labor/management meetings for employees of the Department of Transportation:

a. Methods of obtaining advance notification for construction contractors of the hours the prime contractor and the sub-contractors will be working;

b. Procedures for employees to contact their families when the prime contractors or sub-contractors change their anticipated work schedules;

c. Extended periods of work without days off.

The Parties agreed that they will bring to the labor/management meeting the employees and managers who are knowledgeable about the problems of the employees and the bidding procedures and specifications. They will thoroughly discuss the issues and attempt in good faith to resolve the problems.

Proposal 14 deals with labor-management committee discussions regarding work schedules and bidding procedures for contractors and sub-contractors who are not public employees. We do not believe

that this proposal falls within the meaning of employee "hours" or any other Section 9 topic, and find it permissive.

PROPOSAL 15

Appendix S Community Corrections

7. Pursuant to Article XI, Section 2, quarterly state-wide labor-management committees shall be comprised of a maximum of nine (9) members for management and nine (9) members appointed by the Union who will meet once every three (3) months at mutually agreeable locations.

District labor-management meetings will be established when requested by the appropriate local or chapter. The committee shall be comprised of four (4) members of management and four (4) members appointed by the local Union who will meet once a month in a mutually agreeable location.

Proposal 15 is a proposed Appendix to the contract, and, again, the contract language it is intended to complement is not before us in this case. Thus, we cannot conclude that it is mandatory, as the labor-management committees referenced are not apparently limited to any Section 9 subject of bargaining.

PROPOSAL 16

III. Merit System and Job Classification

Article IX Wages and Fringe Benefits, Section 1

E. Two committees, one composed of four Union representatives of Regents employees appointed by the President of AFSCME/Iowa Council 61 and four representatives of the Employer appointed by the Director of the Iowa Department of Personnel, and the other committee composed of six Union representatives of General Government employees appointed by the President of AFSCME/Iowa Council 61 and six representatives of the Employer appointed by the Director of the Iowa Department of Personnel shall be formed to study and make recommendation regarding the wage pay grades of job classifications within the bargaining units.

The committees shall study classifications submitted by any committee member and shall evaluate the skills, effort,

working conditions, education required and other relevant information regarding the job.

Prior to September 1, 1991 the committees shall meet and develop procedures by which to conduct the study. The procedures shall contain the following items;

1. The collection of job classification information to include completion of position description questionnaires for each job classification that is studied.

2. The evaluation of classifications, based on the questionnaire and all other acquired information.

3. The hearing of appeals from employees for the review of their classification.

4. Any other criteria mutually agreed upon by the parties.

Such reviews shall be completed by September 1, 1992. Committee recommendations shall be forwarded to the Director of the Iowa Department of Personnel and the President of AFSCME/Iowa Council 61 for revisions/approval. If no agreement is reached by the committee as to a pay grade change, the change shall not be made. Pay grade changes shall be ratified by the Union and shall become effective July 1, 1993.

Job classifications not ratified by the parties may be negotiated or taken to interest arbitration for the July 1, 1993 Agreement.

Union members shall serve on these committees without loss of pay.

PROPOSAL 17

Appendix A Pay Grades and Classifications

The Employer will review trades job classifications to determine whether it agrees that additional jobs should have advanced starting rates and/or if certain advanced starting rates should be adjusted. Should either party disagree, the disagreements may be taken to the pay grade committee.

The bargaining topic of "job classifications" is one of the mandatory topics found in section 9 of the Act. In discussing this mandatory topic, PERB has stated:

> [T]he term "job classification" relates to the arrangement of jobs into categories, based on selected factors, for the primary purpose of establishing wage or salary rates. It does not relate to the assignment of employees, notification of those assignments, or the qualifications for employment (although those qualifications, i.e. "training, experience, or skill," may be the basis for the categorical arrangements of jobs). Nor does it include job content (the functions, requirements, and duties of a given job) or job description (a written record summarizing the main features or characteristics of a job, including description of duties, responsibilities, promotional opportunities, materials handled, etc.). (Citations omitted.) Bettendorf Community School District, 76 PERB 598 & 602. See also State of Iowa, 82 H.O. 1980.

The State argues that it is precluded from bargaining over AFSCME's proposal because Chapter 19A, Code of Iowa, grants to the Iowa Department of Personnel the authority to establish personnel matters, including job classifications, wages and benefits, because Section 9 of the Act prohibits mandatory bargaining over IDOP's authority regarding "matters of classification, reclassification or appeal rights", and because the proposals are designed to supersede the intent of the "comparable worth" provisions contained in Section 79.18, Code of Iowa.

Section 9 of the Act, after directing that the employer and employee organization bargain concerning the specified mandatory subjects, including "job classifications", contains the following language:

> Nothing in this section shall diminish the authority and power of the department of personnel to recruit employees, prepare, conduct and grade examinations, rate candidates in order of their relative scores for certification for appointment or promotion

> or for other matters of classification, reclassification or appeal rights in the classified service of the public employer served.

We do not read this language as exempting the State from the duty to bargain the mandatory topic of job classifications. Keeping in mind the rule of statutory construction requiring that "words and phrases shall be construed according to the context and the approved usage of the language," (§4.1(1), Code of Iowa), we believe the section 9 language quoted above merely provides that none of the mandatory bargaining topics should be construed so expansively as to deprive IDOP of its authority to take action in three general areas, i.e., the authority to 1) recruit employees, 2) prepare, conduct and grade qualification examinations, and 3) rate candidates in order of their relative scores for certain specified purposes. The statutory language "or for other matters of classification, reclassification or appeal rights in the classified services of the public employer served" logically relates to the recognized power to "rate candidates", and does not constitute a separate power over all job classification matters shielded from the effect of section 9's bargaining obligations.

AFSCME's proposals in this case are not intended to alter job content, responsibilities, assignments, or qualifications, but are merely designed to review these criteria, set by the State, for the limited purpose of reviewing appropriate wage rates. We do not view these proposals as interfering with the State's Chapter 19A responsibilities. In addition, we note that section 19A.2(a) requires that IDOP rules and policies are to be coordinated with

labor agreements negotiated under the Act - a clear recognition that IDOP's authority may be impacted by Section 9 bargaining obligations.

We further note that, if the committee's authority were limited to "discussion and recommendations", so as to render it mandatory, the potential impact of the committee's recommendations on matters such as "comparable worth" plans would be minimal.

The difficulty with Proposals 16 and 17, however, is that the language goes beyond any Section 9 mandatory topic of bargaining because the proposals require future bargaining and ratification of committee recommendations during the term of the parties' two-year collective bargaining agreement. In Estherville Community School District, 84 PERB 2658, the Board concluded that Section 9 does not contain any subject which could reasonably be interpreted as requiring bargaining during an existing labor contract. (See discussion under Proposal 2). In this case the contract proposals require the State and AFSCME, if they agree to committee wage recommendations, to ratify the recommended wage rates to be effective on July 1, 1993. We consider any committee recommendations requiring ratification by the State and AFSCME as constituting bargaining during the term of the labor agreement. Proposals 16 and 17, like the proposal held permissive in Estherville Community School District, supra, extends the bargaining process beyond the time limits within which the State and AFSCME are statutorily obligated to bargain. For these

reasons, we conclude that proposals 16 and 17 are permissive subjects of bargaining.

DATED at Des Moines, Iowa this 21st day of June, 1991.

PUBLIC EMPLOYMENT RELATIONS BOARD

M. Sue Warner

M. SUE WARNER, BOARD MEMBER

DAVE KNOCK, BOARD MEMBER

CONCURRING OPINION

I join with the majority on Proposal 1, the non-discrimination proposal. In regard to the proposals involving labor-management committees, I concur in the results reached by the majority of the Board as to those proposals, and believe that their opinion follows and properly applies agency precedent. However, I have difficulty with the logic of that earlier Board precedent, and thus reach the same conclusions as the majority, but for a different reason.

Contrary to prior agency decisions, I would find that a proposal to establish a committee made up of members of labor and management is not mandatory, since labor-management committees are not specifically listed in Section 9 of the Act as one of the mandated topics of bargaining. Decisions of the Iowa Supreme Court require that we interpret those listed mandatory subjects narrowly and restrictively. Charles City Community School District v. PERB, 275 N.W.2d 766, 773 (Iowa 1979); City of Fort Dodge v. PERB, 275 N.W.2d 393, 398 (Iowa 1979).

While such committees can be extremely beneficial to the parties, may further the stated public policy of the Act and continue to be encouraged and supported by this agency, I do not believe that bargaining over a proposal to create such a committee is mandated.

RICHARD R. RAMSEY, CHAIRMAN